



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Kenji HAYASHI

Group Art Unit: 2879

Application No.: 10/644,573

Examiner: K. QUARTERMAN

Filed: August 20, 2003

Docket No.: 116887

For: ELECTROLUMINESCENT DEVICE, METHOD FOR MANUFACTURING THE
SAME, AND ELECTRONIC APPARATUS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Notice of Appeal is attached. Applicant respectfully request review of the Final Rejection mailed November 30, 2006 regarding the above-identified application in light of the following remarks. Claims 1-21 are pending in this application. Claims 1-13 are rejected, and claims 14-21 are provisionally withdrawn as being directed to a non-elected group of claims. This review is requested for the following reasons.

I. **Specific Features Recited In The Pending Claims Are Neither Taught, Nor Would They Have Been Suggested, By The Applied Prior Art References**

The Office Action rejects claims 1-12 under 35 U.S.C. §102(e) over U.S. Patent No. 6,924,594 to Ogura et al. (hereinafter "Ogura").

Pending independent claim 1 recites "at least the surface of the second electrode facing the barrier layer including an inorganic oxide, the surface of the second electrode being a separate element from the barrier layer." The April 18, 2007 Advisory Action, in response to the Applicant's Request for Reconsideration After Final Rejection ("Request"), filed

February 28, 2007, reiterates the previous conclusion that Ogura is alleged to teach that the surface of the second electrode facing the barrier layer is the barrier layer, which is disclosed by Ogura as being formed of an inorganic oxide. In making this conclusory statement the Advisory Action must assume that the surface of the second electrode and the barrier layer are not distinct elements. This assertion is incorrect for the following reasons.

In response to the assertions in the November 30, 2007 Office Action, Applicant understood the element numbering of paragraph 5 to be incorrect in that the Office Action referred to the element 211 as corresponding to the claimed barrier layer. Ogura discloses an absorption film (211) (col. 7, lines 40-54), and a barrier layer (210). The barrier layer, as taught by Ogura, is formed to prevent oxygen and moisture absorbed by the absorption layer from directly contacting the cathode (col. 7, lines 25-54). Therefore, Ogura teaches a barrier layer as element 210, the barrier layer, and teaches element 211 as the absorption layer.

The Office Action goes on to incorrectly assert that the surface of the second electrode corresponds to element 210, the barrier layer, of Ogura. Ogura does not recite an element number for designating the surface of the cathode. Ogura teaches that the cathode (208), as illustrated in Fig. 2, is made of an alloy such as MgAg, or aluminum, lithium or calcium, and magnesium may be used (col. 7, lines 25-34). As such, the cathode (second electrode) does not contain an inorganic oxide.

Ogura further teaches that the barrier layer (210) may be formed of an insulating material, specifically copper phthalocyanine, silicon nitride or silicon oxide. Therefore, the barrier layer, of Ogura, does contain an inorganic oxide (compound).

To assert that the surface of the second electrode facing the barrier layer is the barrier layer, one must totally disregard the teachings of Ogura, in addition to Applicant's positive recitation that the surface of the second electrode being a separate element from the barrier layer.

In attempting to force the illustrations of Ogura, particularly in light of Fig. 2, to correspond to the features of pending claim 1, the April 18, 2007 Advisory Action further improperly imports a Dictionary definition as justification for finding a "barrier" layer disclosed in the reference as corresponding to a surface of the second electrode in the pending claims. Again, the plain teachings of Ogura must be disregarded .

Additionally, *Phillips v. AWH Corp.*, 75 USPQ2d 1321 (Fed. Cir. 2005), states that intrinsic evidence is the primary source for determining meaning of claim terms, since claims themselves provide substantial guidance as to meaning of particular terms. Further, extrinsic evidence in general is less reliable than patent and prosecution history in determining how to read claims terms, since it does not have specification's virtue of being created at time of patent prosecution for purpose of explaining patent's scope and meaning, since claims must be construed as they would be understood by hypothetical person of ordinary skill in art, whereas extrinsic publications may not be written by or for skilled artisans.

Applicant's respectfully submit that one skilled in the art would not consider the absorption layer, as taught Ogura, to correspond to a barrier layer, when the barrier layer is defined as preventing the migration of oxygen and moisture from the absorption layer. Further, the Applicant's disclosure clearly defines properties of a barrier layer, as having at least gas barrier characteristics (para. [0018]). Therefore, the preferred recourse for defining a barrier layer is intrinsic evidence, *i.e.*, the Applicant's disclosure.

In light of the above argument, Applicants respectfully submit that the absorption layer of Ogura does not correspond to the barrier layer of the pending claims, nor does the barrier layer 210 of Ogura correspond to the surface of the second electrode.

One need only to refer to the pending claims to determine that the surface of the second electrode, facing the barrier layer, including an inorganic oxide, is meant as an integral part of the second electrode, separate and distinct from the barrier layer, as the claim positively recites that the surface of the second electrode is a separate element from the

barrier layer. Therefore, the Advisory Action improperly asserts that the second electrode, of Ogura, includes an inorganic oxide, simply because the Office Action, and Advisory Action, improperly assert that the barrier layer of Ogura corresponds to the surface of the second electrode.

II. **Conclusion**

Ogura cannot reasonably be considered to teach all of the features positively recited in the pending claims specifically, at least the surface of the second electrode facing the barrier layer including an inorganic oxide, the surface of the second electrode being a separate element from the barrier layer is not taught by Ogura.

In view of the foregoing, Applicant respectfully requests that the Review Panel review the substance of the November 30, 2006 Final Rejection in light of the above remarks.

Applicant believes that upon such review, the Review Panel will determine that a *prima facie* case for anticipation of the subject matter of pending claims over Ogura has not been established. In this regard, favorable reconsideration and prompt allowance of claims 1-13 are earnestly solicited.

Should the Review Panel believe that anything further would be desirable in order to place this application in an even better condition for allowance, the Review Panel is invited to contact Applicant's undersigned representative.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. A. Oliff', with a long horizontal flourish extending to the right.

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